

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-6077

UNITED STATES COURT OF APPEALS
For The Second Circuit

UNITED STATES OF AMERICA and JOHN LYONS
of the INTERNAL REVENUE SERVICE,

Petitioners-Appellees,

v.

THEODORE SLUK,

Respondent-Appellant.

APPELLANT'S BRIEF

C.A. Docket #77-6077

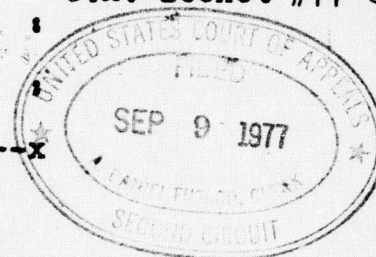


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PRELIMINARY STATEMENT

This is an appeal from an order of the United States District Court for the Southern District of New York filed the 18th day of April, 1977, entered upon a motion by the United States of America, etc. directing among other things that the failure to comply with said order summarily subjects appellant to arrest for contempt of court. The order for contempt of court may be submitted to the presiding judge without further notice and that a writ of body attachment be issued by the Clerk of the Court. The district court docket indicates on April 6, 1977: "Filed respondents affdvt. for dismissal. am. Metzner. J.". The docket for April 11, 1977 indicates: "Filed Govt's petition and show cause order to compel respondent to comply fully with I.R.S. Summons.--Ret. 4/12/77 at 10:30 A.M. room 506.--Metzner. J.". On April 14, 1977 district court docket indicates: "Filed memo endorsed on show cause order dated 4/11/77, Motion granted on default, submit order. Lasker. J. --Memo in support of petitioner's motion for order enforcing IRS summons. Filed in court on 4/12/77. Lasker. J. ". The above are contained on what appear to be Criminal Continuation Sheets.

STATEMENT

The within proceedings are pursuant to 26 U.S.C. Sect. 7402 (b) and 7604(a) to judicially enforce an I.R.S. Summons. An Order to Show Cause dated March 17, 1977, returnable April 12, 1977, was served on appellant. It was signed by United States District Judge Charles M. Metzner. By Affidavit made April 4, 1977, appellant opposed the Order to Show Cause obtained by the I.R.S. to enforce its Summons. The I.R.S. filed no Reply Affidavits and neither did the United States Attorney.

On Saturday May 14, 1977, appellant received by certified mail bearing no indication of sender, a copy of the Order appealed herein, signed by United States District Judge Morris E. Lasker, which order directed among other things that the appellant fully comply with the I.R.S. Summons and appear on May 17, 1977 before the I.R.S., etc.. On Monday, May 16, 1977, appellant appeared at the United States Courthouse, Foley Square, and filed a Notice of Appeal. Appellant then phoned United States Assistant Attorney Annette H. Blum and requested that she arrange for an extension of time on the execution of the order, since the order was being appealed. She informed appellant that she had no authority to change an order of the court. Next, appellant appeared before Judge Lasker, and so informed him. Having read the order, and appellant's filed Notice of Appeal, he issued an order staying execution of his original order pending appeal. The record shows that the order herein appealed, signed by Judge Lasker, was granted by default.

ISSUES PRESENTED

1. Did the I.R.S. act in good faith in issuing the summons, especially in the light of the fact that it claims it seeks to collect a "tax liability" tainted with planned or pending criminal prosecution?

2. Did the United States Attorney act in good faith in omitting to inform the district court concerning the pendency or the intention to institute criminal proceedings?

3. Did the United States Attorney act in good faith in submitting an order to Judge Lasker for relief never requested, upon a motion "granted by default"?

4. The failure of the I.R.S. and the United States Attorney to fully inform the district court concerning its real purpose in issuing the Summons herein, and their failure to raise any issues with respect to appellant's Affidavit probably misled the district court into relaxing its power to scrutinize the real purpose which motivated the issuance of the summons, especially in the light of the fact that the motion was treated as having been granted by default.

ARGUMENT

POINT 1. The docket entries belie the claim by the I.R.S. as set forth in the affidavit of Mr. Lyons who stated: "I am conducting an investigation for the purpose of collecting the outstanding income tax liabilities of the respondent for the periods 1968--72." (Respondent's Affidavit). A-8.

POINT 2. The claims by the United States Attorney must fall for the same reason set forth under point 1 concerning Mr. Lyons. Assistant United States Attorney Annette H. Blum states in her memorandum that the burden is on respondent to demonstrate that enforcement would constitute an abuse of the court's process.... Further on she states: "It appears that respondent seeks to satisfy this heavy burden by merely alleging that the purpose of the summons and its enforcement is the harassment of himself and his family. However, he sets forth no facts to support such allegations, and indeed, cannot do so, for they do not exist."

Presumably the United States Attorney is aware of the docket sheet that indicates that his proceedings for "income tax evasion" have been considered or pending, with respect to which the United States Attorney has not advised or informed appellant. (Docket Sheet, 74 Civ 944, United States v. Theodore Sluk.) A-7.

The 7th Circuit decided on April 11, 1977 in United States v LaSalle National Bank at 11: "Our reading of the reported cases persuades us that the use of an administrative summons solely for criminal purposes is a quintessential example of bad faith."

POINT 3. "Once a summons issued by the Internal Revenue Service is challenged, it is the duty of the district court to scrutinize the summons carefully to determine whether it seeks information relevant to a legitimate investigative purpose. U.S. v Coopers and Lybrand, D.C. Colo. 1975, 413 F. Supp.942." (1977 Supplement, U.S.C.A. 7402, Note 3a, Duty of Court). Quite Obviously, since the United States Attorney misled the district court as cited in Issues Presented #4, this rule was relaxed.

POINT 4. The order appealed is null and void because it grants relief not requested in the moving papers: viz. it peremptorily disposes of a hearing on contempt proceedings and for the issuance of a writ of body attachment without notice to appellant. The United States Constitution, Amendment V, mandates: "no person shall be...deprived of...liberty...without due process.

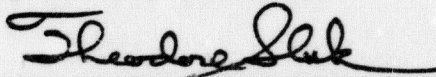
POINT 5. The United States Attorney failed to inform the district court that the Summons was issued solely for criminal purposes, as cited in POINT 2.

POINT 6. The facts contained in the moving papers have not been controverted by the Internal Revenue Service.

CONCLUSION

The Order appealed from should be vacated as being null and void and the I.R.S. Summons vacated and dismissed with costs to appellant.

Respectfully submitted,



THEODORE SLUK, Pro Se.

Dated: September 9, 1977
Pawling, New York.

26 § 7401 PROCEDURE AND ADMINISTRATION Ch. 76

Executive Order transferring responsibility for prosecution of criminal proceedings and suits by or against the United States in civil matters to Department of Justice and Circular Letter directing United States attorneys to present evidence to a grand jury concerning violations of revenue laws only when authorized to do so by Department of Justice did not limit action to the grand jury in respect to cases concerning violations of internal revenue laws, and grand jury was

free to consider evidence put before it by District Attorney without authorization from the Attorney General's office, of violations of income tax laws by making and filing false and fraudulent returns. *Id.*

5. Criminal actions

This section applies only to civil suits and not to criminal proceedings. *Sullivan v. U. S.*, Kan.1954, 75 S.Ct. 132, 348 U.S. 170, 99 L.Ed. 210.

§ 7402. Jurisdiction of district courts

(a) To issue orders, processes, and judgments.—The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) To enforce summons.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) For damages to United States officers or employees.—Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

(d) Action on bonds.—The United States district courts, concurrently with the courts of the several States, shall have jurisdiction of any action brought on the official bond of any internal revenue officer or employee required to give bond under regulations promulgated by authority of section 7803.

(e) To quiet title.—The United States district courts shall have jurisdiction of any action brought by the United States to quiet title to property if the title claimed by the United States to such property was derived from enforcement of a lien under this title.

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III.1958, 170 F.Supp. 12.

§ 7604. Enforcement of summons

(a) Jurisdiction of district court.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement.—Whenever any person summoned under section 6420(e) (2), 6421(f) (2), 6424(d) (2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegate may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of

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A-1

DATE	PROCEEDINGS
3-7-77	NATIONAL LABOR RELATIONS BOARD, -v- BIOPHYSICS SYSTEMS, INC et al Filed true copy of USCA mandate of USDC in SDNY withdrawing the appeal.
3-22-77	ETC -v- CHARLES E.F. MILLARD ETC.---Filed memo endorsed on order dated 12-23-76 this motion is marked withdrawn pursuant to stip. of counsel. So ordered Metzner, J.
3-30-77	ETC -v- CHARLES E.F. MILLARD ETC.---Filed stip of discontinuance that the above entitled hereby is discontinued with prejudice & without cost to any party. So ordered. Metzner, J.
4-1-77	USA et ano -v- KENNETH BOCK---Filed memo endorsed on show cause order dated 3-18-77. on 3-31-77 an application of Mr. Juniter, assist USA this order & allocation is withdrawn. So ordered. Metzner, J.
4-4-77	SCHLUMBERGER TECHNOLOGY CORP. etc. -v- USA ---Filed affdvt. of William G. Ballaine. --Filed affdvt of mailing.
4-6-77	SCHLUMBERGER TECHNOLOGY CORP. etc. -v- USA---Filed order compelling compliance by Price Waterhouse & Co. & Michael F. Klein with a subpoena duces tecum issued 2-23-77. Edelstein, J.
4-6-77	IN RE: OF APPLICATION OF SHAHAM S.A. etc.---Filed affdvt & notice of motion order quashing subpoena duces tecum. ret. 4-19-77 at 10:00 am in USCA Foley Square.---Filed memorandum of law.
4-11-77	U.S.A. et ano -v- THEODORE SLUK-- Filed Govt's. petition and show cause order to compel respondent to comply fully with I.R.S. Summons.-- Pet. 4/12/77 at 10:30 A.M. room 506.-- Metzner, J.
4-12-77	USA et al -v- BERNARD NOVICK ---Filed order that resp. comply with the above mentioned IRS summons in the following manner etc. Bryana, J.
4-12-77	USA -v- FIRST NATIONAL CITY BANK et al---Filed true copy of USCA order & opinion affirming the order of the dist court with bill of costs as taxed in favor of petitioner in the sum of \$397.01 & docketed as judgment # 77,492.
4-12-77	USA -v- MANNY RESKAKIS---Filed memo endorsed on show cause order dated 3-14-77, motion granted on default. submit order. Lasker, J.
4-14-77	USA -v- Theodore Sluk---Filed memo endorsed on show cause order dated 4-11-77. Motion granted on default. submit order. Lasker, J. Memo in support of petitioners' motion for order enforcing IRS summons. Filed in court on 4-12-77. Lasker, J.
4-13-77	IN RE: TAX LIABILITY OF GOODHART AGENCY, INC.---Filed memo endorsed on notice of motion dated 2-24-77. Marked off it is so ordered. Lasker, J.
4-13-77	NATIONAL LABOR RELATIONS BOARD -v- GARDEN FASHIONS, INC et al ---Filed memo endorsed on copy of order to show cause order docketed on 3-3-77 Motion disposed of in accordance with rules on the record, submit order on one days' notice. Lasker, J.
4-13-77	NLRB -v- GARDEN FASHIONS INC, et al---Filed certificate of service of Robert G. Landes on behalf of NLRB, for taking of deposition.
4-14-77	NLRB -v- GARDEN FASHIONS INC ET AL --- Filed certificate of service of Robert G. Landes on behalf of NLRB, for taking of deposition.
4-14-77	NLRB -v- GARDEN FASHIONS INC, ET AL ---Filed copy of order dated 3-18-77 upon application for order compelling depts to obey deposition subpoena. Metzner, J.
4-14-77	NLRB -v- GARDEN FASHIONS INC, ET AL ---Filed applicants memo in support.
4-15-77	IN RE: APPLICATION OF SHAHAM, S.A. etc---Filed affdvt of Burton W. Wiand in opposition to motion to quash subpoena.
4-15-77	IN RE: APPLICATION OF SHAHAM, S.A. etc ----Filed memo of law in support
4-15-77	USA et ano -v- CHRISTOPHER C. MC GRATH---Filed affdvt & show cause order of order dated 1-31-77 that resp. show cause why he should not be punished for contempt for noncompliance. ret. 4-26-77 Rm 506 at 10:30
4-6-77	USA vs T. SLUK: Filed respondents affdvt. for dismissal. am. Metzner,

DATE	PROCEEDINGS
4-12-77	USA et al -v- MANNY RESKAKIS ---Filed memo endorsed motion granted, submit order. Lasker, J.
4-18-77	USA et al -v- MANNY RESKAKIS ---Filed order that resp. fully comply with IRS agent John Brice Giglia or his representative on or before Tuesday at 11:00 A.M. on 4-26-77 at 55 W 125th St N.Y.C. Lasker, J.
4-18-77	USA et al -v- Theodore Sluk ---Filed order that resp. comply with IRS summons & appear at their offices at 235 Main St. Poughkeepsie failure to comply may subject resp. to contempt. Lasker, J.
4-21-77	USA et al -v- RAY CRABTREE ---Filed affdvt & show cause order requiring resp. to appear in person in room 506 at USCH in N.Y. on 5-3-77 at 10:30 A.M. Lasker, J. Filed govts memo of law in support.
4-21-77	IN RE: APPLICATION OF SHAHAM S.A. et al. ---Filed order that the petition is dismissed for the reasons indicated by the court at the oral argument on 4-19-77. Stewart, J.
4-22-77	USA ET AL-v- RICHARD H. MAIDMAN ---Filed written response in court on 2-1-77.
4-22-77	USA ET AL -v- RICHARD MAIDMAN---Filed supplemental memo of law of the United States in support of government's application for an order directing the resp. to obey IRS summons.
4-25-77	USA -v- RICHARD MAIDMAN---Filed memo endorsed on show cause order dated 4-25-77. The application by the govt. for an order directing the resp. to obey the summons served, is granted. The govt. is directed to submit an appropriate order on notice. So ordered. Pierce, J.
4-25-77	USA ET AL-v-JOEL COHEN as Office Mgr. of Confidence Agcy, Inc. ---Filed order that Joel Cohen fully comply with summons of IRS by appearing at 120 Church St. N.Y. before Revenue Agent William Dunseith on or before 5-9-77 at 10:00 A.M. Failure to comply may subject resp. to charge of contempt. Lasker, J.
4-26-77	USA et al -v- GABRIEL BULLARD---Filed govts affdvt & show cause order that resp. is required to appear in person in room 506 USCH, Foley Sq N.Y.C. at 10:30 A.M. on 5-3-77. Govt. memo of law attached. Lasker, J.
4-26-77	USA et al -v- ELAINE LIEBERMAN---Filed govts affdvt & show cause order that resp. is required to appear in person in room 506 USCH, Foley Sq N.Y.C. at 10:30 A.M. on 5-3-77. Govts memo of law attached. Lasker, J.
4-26-77	MURRAY DIRECTOR AFFILIATES, INC. -v- SEC ---Filed stip. of settlement that parties through counsel hereby stipulate & agree that the appeal in this matter shall be withdrawn without costs or Disbursements. True copy dated 4-12-77
4-27-77	USA -v- Christopher C. MC GRATH, ---Filed memo endorsed on show cause order dated 4-15-77. The IRS reports that they received the 1974 Income Tax Return of the resp. in today's mail. This is deemed to be compliance with the summons. Govt. withdraws the application to find the resp. in contempt of court. So Ordered. MacMahon.
4-28-77	NLRB -v- GARDEN FASHIONS, INC ET AL. ---Filed order that resps. by Bing Fin Chan a/k/a Bill Lee appear at the taking of deposition before the board at its Regional Office, 26 Federal Plaza, Rm. 3614 N.Y.C. to testify & produce records, at a time designated by the Regional office upon providing 5 days written notice to Bing Fin Chan a/k/a Barry Chan a/k/a Bill Lee or his attorney Philip G. Klein. Lasker, J.
5-4-77	MARCY MANKOFF OF IRS, -v- GABRIEL BULLARD---Filed memo endorsed on show cause order dated 4-26-77. ---Motion granted, submit order. Knapp, J.
5-4-77	EDWARD M. NORTON of IRS, -v- ELAINE LIEBERMAN---Filed memo endorsed on show cause order dated 4-26-77, ---Motion granted on default. Submit order. Knapp, J.

DATE	PROCEEDINGS
5-4-77	STEPHEN SCHWARTZ OF IRS, -v- RAY CRABTREE---Filed memo endorsed on show cause order dated 4-21-77, ---Motion granted, submit order. Knapp, J.
4-26-77	USA & EDWARD M. NORTON-v-ELAINE LIEBERMAN---Filed memo of law.
4-26-77	USA & MARCY MANOFF ---Filed memo of law.
5-5-77	USA ET ALO -v- EVELYN MITCHELL AS MGR. OF ODEON RESTAURANT, ---Filed affdv & show cause order of Leo C. Steinke to show cause why resp. should not be compelled to testify & produce records. Resp. to appear before USDC on 5-17-77 RM. 506 at 10:30A.M. MacMahon, J.
5-5-77	USA ET ALO -v- EVELYN MITCHELL AS MGR. OF ODEON RESTAURANT, ---Filed govts memo of law in support.
5-9-77	USA et al -v- HAROLD A. KIERNAN---Filed affdvt & show cause order of Edwin K. Kohl why the resp. should not be compelled to comply fully with IRS summons. Ret. 5-24-77 Rm. 506 at 10:30 A.M. Knapp, J.
5-9-77	USA et al -v- HAROLD A. KIERNAN---Filed memo of law in support of petitioner's motion for an order enforcing IRS summons.
5-10-77	USA et al-v- O'HENRY'S FILM WORKS, INC., et al, ---Filed affdvt & show cause order requiring resp. to appear in person in Rm 506 US Courthouse, Foley Square N.Y.C. at 10:30 A.M. on 5-24-77. Knapp, J.
5-10-77	USA et al -v- O'HENRY'S FILM WORKS, INC., et al---Filed memo of law in support of summons enforcement.
5-11-77	USA et al -v- GABRIEL BULLARD ---Filed order that resp. comply with IRS summons on 5-26-77 at 55 W. 25th St. N.Y.C. at 10:00, Knapp, J.
5-11-77	USA et al -v- RAY CRABTREE, ---Filed order that resp. comply with IRS summons on 5-16-77 at 120 Church St. N.Y.C. at 9:00A.M. Knapp, J.
5-11-77	USA et al -v- JOSEPH LAUER ---Filed affdvt & show cause order for resp. to appear & show cause why he should not be compelled to testify & produce records. Ret. 5-17-77 rm. 506 at 10:30 A.M. MacMahon, J.
5-11-77	USA et al -v- JOSEPH LAUER ---Filed govts memo in support.
5-16-77	USA et al -v- JAMES L. KOKICH PRES. OF BACK ISSUES INC., ---Filed show cause order requiring resp. to appear in US courthouse in Rm. 506 at 10:30 A.M. on 5-24-77 & produce books, records etc. required by IRS & show cause why he should not be compelled to testify. Knapp, J.
5-16-77	USA et al -v- James L. Kokich Pres. of Back Issues Inc., ---Filed govts memo of law in support.
5-16-77	USA et al -v- THEODORE SLUK---Filed notice of appeal that resp. appeals to the USC of appeals for the Second Circuit from the order of Judge Lasker entered in this case on 4-18-77. mailed copy to US attny
5-17-77	USA ET AL-v-THEODORE SLUK---Filed order that the provisions of the order of 4-18-77 be & they hereby are stayed pending the hearing & determination of the appeal therefrom. Lasker, J.
5-18-77	USA ET AL-v-ELAINE LIEBERMAN ---Filed order that resp. fully comply with IRS summons by appearing at 120 Church St. N.Y.C. on 6-6-77 at 10:00AM Group 26 on the 7th Fl. Knapp, J.
5-23-77	USA -v- O'Henry's Film Works, Inc. etc. ---Filed stip & order that the hearing on the order to show cause scheduled for 5-24-77 is adjourned to 5-31-77.
5-24-77	USA -v- O'HENRY'S FILM WORKS, INC.---Filed affdvt of Henry Pergament.
5-24-77	USA -v- O'HENRY'S FILM WORKS, INC.---Filed memo of law in opposition to summons enforcement.
5-26-77	USA -v- EVELYN MITCHELL---Filed memo endorsed motion withdrawn Owen, J.
5-26-77	USA -v- JOSEPH LAUER---Filed memo endorsed motion withdrawn Owen, J.
5-26-77	USA -v- JAMES L. KOKICH---Filed memo endorsed motion granted no opposition. Owen, J.

AMB:ggg
77-0647

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

JOHN LYONS of the
Internal Revenue Service, :

Petitioners, :

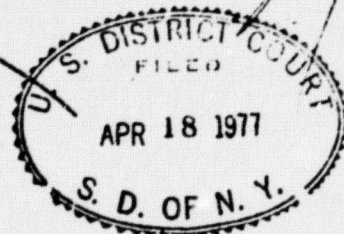
-v- :

THEODORE SLUK :

Respondent. :

ORDER

11-18-304



MICROFILMED
APR 18 1977

An order having been issued directing Theodore Sluk the respondent herein to show cause why said respondent should not fully comply with the summons issued by the Commissioner of Internal Revenue directing respondent to appear before an Internal Revenue Officer, and said order having been served upon respondent, and said order to show cause having come on to be heard before me on the 12th day of April, 1977 and Annette M. Blum, Special Assistant United States Attorney having appeared in support thereof and respondent having submitted an affidavit in opposition but having failed to appear,

Now, on motion of Robert L. Fiske, Jr., United States Attorney for the Southern District of New York, it is

ORDERED AND DECREED: that Theodore Sluk, the respondent herein, fully comply with the summons by appearing at the office of the Internal Revenue Service at 235 Main Street, Poughkeepsie, New York before Revenue Agent John Lyons or his representative on or before May 17, 1977 at 10:00 A.M. and by producing at that time the documents and

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AlB:ga
77-0047

records referred to in the Internal Revenue Services' summons forming the basis of the order to show cause herein.

Failure to comply with this order may subject the respondent to a charge of contempt of court and an order of contempt of court may be submitted to the presiding judge without any further notice and a writ of body attachment may be issued by the Clerk of the Court.

Dated: New York, New York

April 14, 1977

Thomas E. Lasker

THOMAS E. LASKER
United States District Judge

EA

BEST COPY AVAILABLE

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74 CIV. 9443
JUDGE OWEN

Jury demand date:

TITLE OF CASE

ATTORNEYS

For plaintiff:

US ATTN:

COURTHOUSE FOLEY SQ. 264-6325

VS

THEODORE SLUK

For defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed x	Clerk		11-5-11	
J.S. 6 mailed 1-1-71	Marshal			
Basis of Action: income tax evasion	Docket fee			
	Witness fees			
Action arose at:	Depositions			
(EXHIBIT 1)			A-7	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA and
JOHN LYONS of the Internal
Revenue Service,

Petitioners,

v.

THEODORE SLUK,

Respondent.

AFFIDAVIT

N 18 - 304

-----X

STATE OF NEW YORK }
COUNTY OF DUTCHESS } SS

THEODORE SLUK, being duly sworn, says:

I am the respondent herein. I have been unable to secure the services of an attorney to represent me.

As will be noted, the petitioner claims, upon information and belief, that my testimony, books, papers, records, or other data may be relevant***. The period of time covered in this proceeding begins with the year 1968. It is physically impossible in a period of five (5) days for me to cover this matter sufficiently to properly place before this Court the facts involved.

However, attached hereto is a photocopy of a letter dated January 2nd, 1973, addressed to the District Director of Internal Revenue, Albany, New York, to which reply has never been made.

On September 7th, 1976 I wrote JOHN P. LYONS, one of the petitioners herein as follows: "Dear Mr. Lyons: On January 2nd, 1973 I replied to a letter signed by Mr. TAKES of your office. As of this date, I have not been favored with the requested reply. Perhaps you could inform me when I may expect a reply and why one has not been made before this late date. If by chance you did not

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receive my letter of January 2nd, 1973, please let me know and I shall send you a copy." As of this date neither Mr. TAKES nor Mr. LYONS have made reply to my letters. Mr. LYONS did write me on September 13th, 1976 as follows: "Dear Mr. Sluk: This is to acknowledge receipt of your letter dated September 7, 1976. I am not familiar with your correspondence with Mr. Takes of our Albany office, however, I have requested a copy of your 1973 letter to Mr. Takes from our Albany office. In addition, I have requested any other documents that are available pertaining to the subject matter discussed in the correspondence between yourself and Internal Revenue. When the requested information is received, I shall get in touch with you." Mr. LYONS never did keep the promise he made in that letter.

As indicated by the Certificate of Service of Summons attached to the moving papers, Mr. LYONS "replied" to my letters of January 2nd, 1973 and September 7th, 1976 when he served the Summons on September 17th, 1976 on RICHARD MAYER.

The THOMAS F. VASTI, Jr. mentioned in my letter to the Internal Revenue Service on January 2nd, 1973 was attorney for Taconic Concrete Structures, Inc. and Theodore Sluk, beginning in 1965 representing me, and in 1966 the corporation and myself. Attached hereto is a copy of a letter I wrote Mr. VASTI on July 15th, 1969 to which he has never made reply. There are numerous letters to the Internal Revenue Service and Vasti by me to which replies have never been made.

In the light of the foregoing, I urge that the proceeding is not made in good faith and is made for the purpose of further harrassing and annoying my family and myself. Accordingly, I urge that it be dismissed with costs.

THEODORE SLUK, Pro Se.

Sworn to before me this
day of April, 1977.

WAYNE C. ADAM
Notary Public, State of New York
No. 4610224
Qualified in Westchester County
Commission Expires March 30, 1978



Post Office Box 155
Pawling, New York 12564
January 2nd, 1973

District Director
Internal Revenue Service
Albany, New York
Attention: Mr. Arthur P. Takes, Chief, Review Staff.
Dear Mr. Takes,

I refer to your letter dated December 19th, 1972.

I can only make a partial protest to the IRS audit due to the fact that the IRS has failed to furnish me with the often requested information necessary to make a more complete protest. IRS has repeatedly ignored my requests for this information. Accordingly, I will set forth my partial protest as best I can as a person not familiar with the complex and confusing IRS complex.

I protest the IRS so called audit on the grounds that it is a FALSE computation. Since you illegally forced me out of business I have found it necessary to become an employee in order for me and my family to survive, as you well know. By letter dated December 3, 1971 addressed to my employer, you demanded copies of my W-2 Forms for previous years of employment as well as a statement of whether I was currently employed. Undoubtedly, you made similar demands of my previous employers. Also, your so called audit conveniently fails to make mention of all the money which the IRS has unlawfully extracted from me over the years. Obviously the intentions of the IRS are not honorable and include an extension of the successful conspiracy between it and Thomas F. Vasti, Jr., an attorney, and others to destroy me.

The IRS had full knowledge of the affairs between Taconic Concrete Structures, Inc.(me) and Perlstein Builders, Inc., yet it wilfully did not collect taxes due from Perlstein and by their unlawfulness the IRS aided and abetted in the conspiracy against me.

As your experience dictates forced sales of taxpayers assets even if honestly conducted, serve only to make it impossible for the taxpayer to become a consequential taxpayer as of now, almost 6 years later, you have refused to inform me what each article brought at the forced sale. I consider this failure to be tantamount to an IRS swindle.

As of now you have six letters from me showing your part in the conspiracy, yet the IRS has tacitly admitted its wrongdoing by failing and refusing to show it has acted honorably and lawfully.

Rebbling, as you did in my case, a man of his business, credit, and the tools and equipment necessary to earn a livelihood are unlawful acts of distraint.

I have noted that the IRS claims the high and mighty position of a self appointed potentate which is in no wise accountable to the taxpayers for its behavior. As you must know the General Accounting Office at Washington was established to check on the receipts and expenditures of taxpayers money. Yet, I read in the press that the IRS refused to be audited by the General Accounting Office. I've heard that the IRS claims for itself the distinction of being upright, honorable and wholly impartial. Can you blame taxpayers for refusing to be audited when you refuse to be audited??

The double standards of the IRS serve to destroy the confidence of taxpayers in all government agencies because you defy the U.S. Constitution each time you presume to act as lawmaker, persecutor, judge and jury, as you have done in my case and because you falsely assume a holy rectitude which makes it "criminal" for you to be audited by the GAO. How come your self anointed righteousness did not impel you to "audit" the U.S. Steel Company which did not pay one red cent of income tax in 1971? Is this a

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part of your "impartiality" program?

The lawlessness of the IRS has violated and defied rights guaranteed to me and all other American taxpayers, by the 4th, 5th, 13th, 14th, and 16th Amendments of the U.S. Constitution as well as those guaranteed by the various Articles of the Constitution and others Amendments. You have caused me irreparable damage by your lawlessness and I demand that the IRS take steps now to reimburse me and my family for the financial and other losses for which you are responsible.

In the meantime I urge that the IRS cease harassing and annoying me and my family.

Very truly yours,

Theodore Sluk

F.S. I have not as yet secured counsel to help me in this matter.

via certified mail
return receipt

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO
District Director, I.R.S.

STREET AND NO.
Albany, New York

NAME AND TITLE
Arthur P. Takes
Chief, Review Staff

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES	1. Shows to whom and date delivered with delivery to addressee only	65¢
	2. Shows to whom, date and where delivered with delivery to addressee only	35¢ 85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (extra fee required)		

PS Form 3800
Apr. 1971

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side.)
GPO: 1970-0-387-600

No. 038676

SENDER: Be sure to fill in last of "yes" on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Add postage charges required for these services)

☒ Show to whom, date and address where returned

☐ Deliver ONLY to addressee

RECEIPT

Received the number of articles described below

REGISTERED NO. _____

SIGNATURE OF POSTAGE ADDRESSEE (Must be in full ink)

Division of Internal Revenue

ARTICLE NO. _____

038676

INSURED NO. _____

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED _____

ON, IF WHEN DELIVERED (Only if requested, and include ZIP Code)

JAN 8 1973

BEST COPY AVAILABLE

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Post Office Box 155
Pawling, New York 12564
July 15, 1969

Mr. Thomas F. Vasti jr.
Lakeshore Drive
Pleasant Valley, N.Y. 12569

MCERTIFIED MAIL RETURN
RECEIPT REQUESTED

Dear Tom,

Please answer the letters referred to in my letter dated July 5, 1969 at once.

Also please take the steps necessary to obtain from whomever may have same, the "Confession" referred to in my letter dated July 5, 1969.

Your prompt cooperation will be appreciated.

Letter from Internal Revenue Service which makes it urgently necessary that I receive your reply by return mail.

Very truly yours,

Theodore Sluk

ts:lem

BEST COPY AVAILABLE

RECEIPT FOR CERTIFIED MAIL—30¢

SENT TO THOMAS F. VASTI JR	
STREET AND NO. LAKESHORE DRIVE	
P.O., CITY, AND ZIP CODE PLEASANT VALLEY N.Y.	
EXTRA SERVICES FOR ADDITIONAL FEE	
Shows to whom and date delivered ☐ 10¢ fee	Shows to whom, date, and where delivered ☐ 35¢ fee
Deliver to Addressee Only ☐ 50¢ fee	

POSTMARK
OR DATE

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and
address where delivered ☐ Deliver ONLY
to addressee
(Additional charges required for these services)

RECEIPT

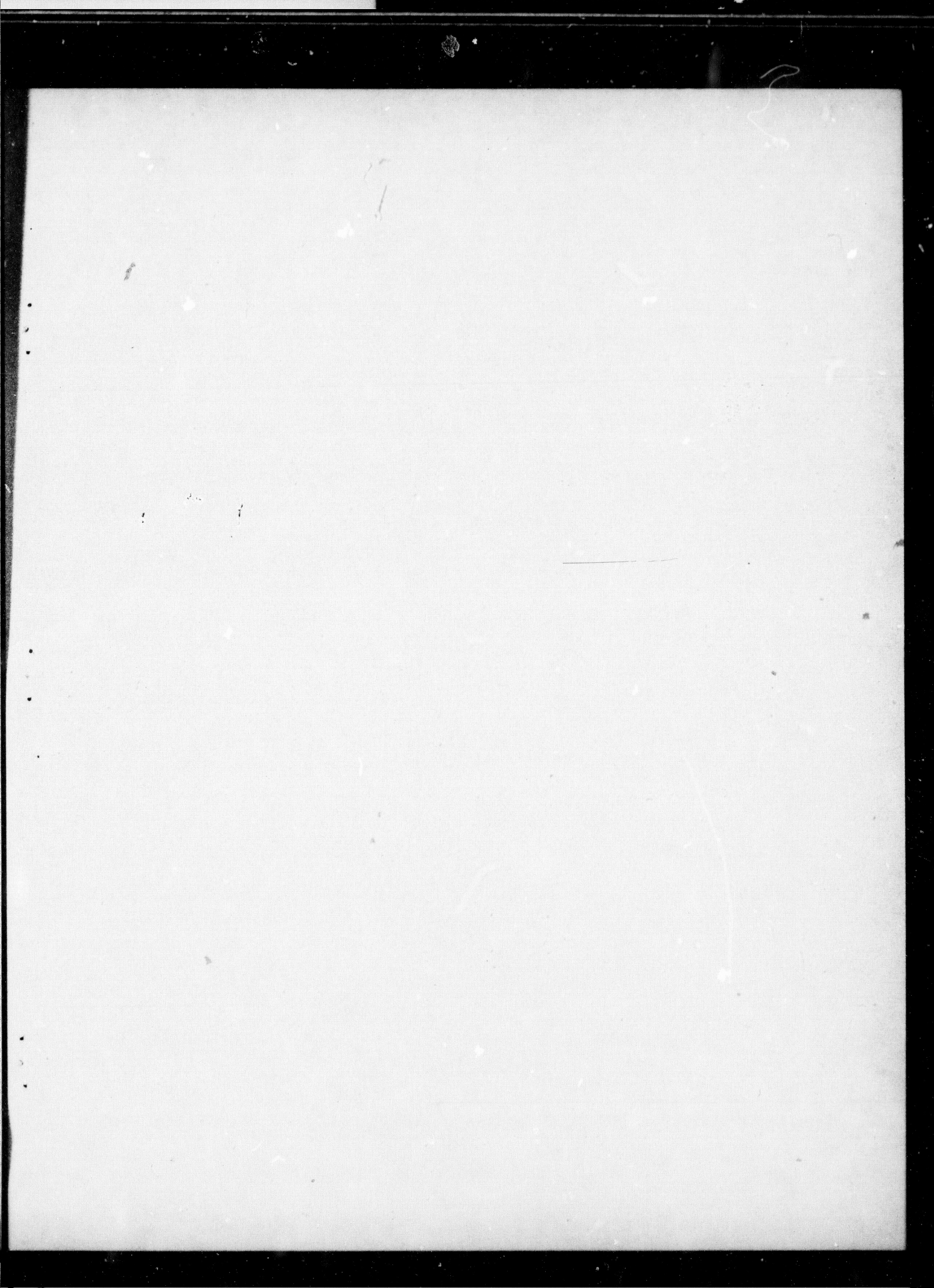
Received the numbered article described below.	
NO.	SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
2	<i>Thomas F. Vasti Jr.</i>
	SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
	<i>Paul Sluk</i>
TEO	SHOW WHERE DELIVERED (only if required)

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FOR FORM 3800 NO INSURANCE COVERAGE
NOV. 1966 NOT FOR INTERNATIONAL MAIL

PROVIDED—(See other side)
U.S. MAIL

LCOT87
No. 78707



STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within
found to be a true and complete copy. has been compared by the undersigned with the original and

Dated:

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is
the attorney(s) of record for
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein
stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent
further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL VERIFICATION

deponent is the-
read the foregoing
the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and
belief, and that as to those matters deponent believes it to be true. and knows the contents thereof; that
Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF

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CORPORATE VERIFICATION

, being duly sworn, deposes and says that deponent is the
the corporation

named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because

is a corporation. Deponent is an officer thereof, to-wit, its

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this

day of

19

STATE OF NEW YORK, COUNTY OF

59. :

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the
upon

day of

19

deponent served the within

attorney(s) for

in this action, at

the address designated by said attorney(s) for that purpose

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this

day of

19

STATE OF NEW YORK, COUNTY OF

85. :

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the

day of

19

at No.

deponent served the within

upon
the

herein, by delivering a true copy thereof to h personally. Deponent knew the

person so served to be the person mentioned and described in said papers as the

therein.

Sworn to before me, this

day of

19

BEST COPY AVAILABLE

NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney for

Index No.

7706077

Year 19

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**UNITED STATES OF AMERICA and
JOHN LYONS of the INTERNAL
REVENUE SERVICE,**

Petitioners-Appellees,

v.

THEODORE SLUK,

Respondent-Appellant.

APPELLANT'S BRIEF

THEODORE SLUK, Pro Se

~~XXXXXXXX~~

Office and Post Office Address, Telephone

**Post Office Box 155
Pawling, New York 12564**

To **ROBERT B. FISKE, JR.**

Attorney for **UNITED STATES OF AMERICA**

Service of a copy of the within

is hereby admitted.

Dated,

Attorney for

Robert B. Fiske, Jr. (R.L.)

COPY RECEIVED

9/9/77

UNITED STATES ATTORNEY